

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John W. Darrah	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 7993	DATE	4/7/2004
CASE TITLE	Williams vs. Precision Recovery, Inc. et. al.		



[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Status hearing held and continued to 5/20/04 at 9:00 a.m. For the reasons stated in the attached memorandum opinion and order, Americredit Financial Services, Inc.'s Rule 12(b)(6) motion to dismiss Counts IV and V of Williams' complaint is denied. Enter Memorandum Opinion and Order.
- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	MF	courtroom deputy's initials	APR 08 2004 date docketed  docketing deputy initials  date mailed notice  mailing deputy initials	Document Number  
Date/time received in central Clerk's Office				

U.S. DISTRICT COURT  
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2004 APR -7 PM 12:36

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RECORDED  
APR 08 2004

SHELVA C. WILLIAMS,

Plaintiff,

v.

PRECISION RECOVERY, INC. and  
AMERICREDIT FINANCIAL SERVICES, INC.,

Defendants.

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AMERICREDIT FINANCIAL SERVICES, INC.,

Counter-Plaintiff,

v.

SHELVA C. WILLIAMS,

Counter-Defendant.

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AMERICREDIT FINANCIAL SERVICES, INC.,

Cross-Plaintiff,

v.

PRECISION RECOVERY, INC.,

Cross-Defendant.

No. 03 C 7993

Judge John W. Darrah

**MEMORANDUM OPINION AND ORDER**

Plaintiff, Shelva C. Williams, filed suit against Defendants, AmeriCredit Financial Services and Precision Recovery, Inc., alleging violations of Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. 1692, *et seq.*, the Illinois Consumer Fraud and Deceptive Business Practices Act

("ICFA"), 810 ILCS 5/9-609, and for trespass. Williams also seeks redress against AmeriCredit for violating the Illinois Commercial Code ("ICC"), 815 ILCS 5/9-101, *et seq.*, and ICFA. Subsequently, AmeriCredit filed a Counterclaim against Williams, alleging AmeriCredit had a superior right, title and interest in the vehicle and that Williams breached her contract with AmeriCredit. Presently pending before the Court is AmeriCredit's Motion to Dismiss Counts IV and V of Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

### **LEGAL STANDARD**

In reviewing a motion to dismiss, the court reviews all facts alleged in the complaint and any reasonable inferences drawn therefrom in the light most favorable to the plaintiff. *See Marshall-Mosby v. Corporate Receivables, Inc.*, 205 F.3d 323, 326 (7th Cir. 2000) (*Marshall-Mosby*). A plaintiff is not required to plead the facts or the elements of a claim, with the exceptions found in Federal Rule of Civil Procedure 9. *See Swierkiewicz v. Sorema*, 534 U.S. 506, 511 (2002); *Walker v. Thompson*, 288 F.3d 1005, 1007 (7th Cir. 2002). A filing under Federal Rules of Civil Procedure need not contain all the facts that will be necessary to prevail. It should be "short and plain," and it suffices if it notifies the defendant of the principal events. *Hoskins v. Poelstra*, 320 F.3d 761, 764 (7th Cir. 2003). Dismissal is warranted only if "it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). The simplified notice pleading relies upon liberal discovery and summary judgment motions to define disputed issues and facts and to dispose of unmeritorious claims. *Swierkiewicz*, 534 U.S. at 513.

## **BACKGROUND**

A reading of the Plaintiff's Complaint and Defendant/Counter-Plaintiff's Counter-Claim supports the following summary of the alleged operative conduct of the parties.

On or about February 7, 1998, Williams purchased a used 1997 Oldsmobile Cutlass from New Rogers Pontiac, Inc. in Chicago, Illinois. After executing the Retail Installment Contract, New Rogers Pontiac assigned the Retail Installment Contract to AmeriCredit Financial Services. The contract required Williams to tender AmeriCredit \$394.72 a month. Williams failed to make required monthly payments to AmeriCredit and was in default under the Contract in the sum of \$3,792.41, plus interest. On March 27, 1998, the State of Illinois issued AmeriCredit a Certificate of Title for the vehicle.

Prior to April 30, 2003, Williams entered into an agreement with an AmeriCredit agent that she would wire money to AmeriCredit to avoid the repossession of her vehicle. Williams wired the money to AmeriCredit; but on April 30, 2003, AmeriCredit had Precision Recovery repossess the vehicle. In the early morning hours of April 30, 2003, an employee of Precision Recovery jumped over Williams' fence and forced open a locked garage, damaging the garage door. The Precision Recovery employee then drove off with Williams' vehicle, including personal property contained within the vehicle. In addition, several items from Williams' garage were stolen.

On May 2, 2003, AmeriCredit sent Williams a Notice of Right to Redeem or Reinstate, which stated that Williams should contact AmeriCredit to learn the identity of its agent in order to recover her personal property. Williams also received a Notice of Plan to Sell Property, as well as an Affidavit of Defense form. Williams contacted AmeriCredit, and AmeriCredit provided her with Precision Recovery's contact information. Williams never served AmeriCredit with an Affidavit of

Defense and never notified AmeriCredit of any claims or defenses that she had to the vehicle's repossession. On June 3, 2003, AmeriCredit sold the vehicle. After applying the sales proceeds from the vehicle and all appropriate cost and charges to Williams' account, there remains a balance owed of \$3,792.41.

### ANALYSIS

Count IV of Williams' Complaint alleges that AmeriCredit violated the Illinois Commercial Code, by its agent's, Precision Recovery's, breach of the peace. Count V of the Complaint alleges that AmeriCredit committed an unfair and deceptive practice in violation of 815 ILCS 505/2 when AmeriCredit required Williams to wire money but failed to cancel the repossession. In its Motion to Dismiss, AmeriCredit contends, as to Count IV, that AmeriCredit had an absolute right to repossess the vehicle based on the non-payment required by its contract with Williams and that Williams' assertion that Precision is AmeriCredit's agent is "baseless." Furthermore, AmeriCredit contends Williams cannot allege any factual or legal premise to maintain a claim against AmeriCredit for a "mythical" violation of the ICFA, as pled in Count IV. Therefore, AmeriCredit asserts that Counts IV and V of the Complaint should be dismissed for failure to state claims for which relief can be granted.

In Count IV, Williams pleads that Precision was AmeriCredit's agent. Williams also alleges that "[a]fter the recovery of the vehicle, Plaintiff received a notice from AmeriCredit stating to contact it to learn the identity of its agent to recover her personal property." Williams has sufficiently pled an agency relationship as to its ICC claim.

AmeriCredit next argues Count IV should be dismissed because Williams cannot maintain a *prima facie* cause of action for wrongful repossession. AmeriCredit cites *Valentino v. Glendale*

*Nissan, Inc.*, 740 N.E.2d 538 (Ill. App.2nd Dist. 2000) in support of its position that, because AmeriCredit had superior title, it had the right to repossess the vehicle.

However, Williams alleges that AmeriCredit violated Section 9.609(b)(2) of the ICC, which provides a secured party may proceed in taking possession of the collateral “without judicial process, if it proceeds without breach of the peace.” Williams pleads that AmeriCredit violated the Act when its agent breached the peace to repossess the vehicle. Accordingly, Williams has sufficiently pled a violation of the ICC.

Next, AmeriCredit argues that Count V should be dismissed because Williams has failed to allege any specific allegations as to misrepresentations made to Williams by AmeriCredit and that any such representation was made with the intent that she would rely on it.


There are three elements of an ICFA claim: (1) a deceptive act or practice, (2) intent on defendant’s part that plaintiff rely on the deception, and (3) the deception occurred in the course of conduct involving trade or commerce. *Recreation Services Inc., v. Odyssey Fun World, Inc.*, 952 F. Supp. 594, 596 (N.D. Ill. 1997). Here, Williams alleges that AmeriCredit received payment by agreeing to cancel the repossession when it had no intention to do so and that AmeriCredit intended for Williams to rely on its deception. Further, Williams alleges that AmeriCredit’s unfair practice caused Williams to make a payment that she would not have made.

Based on the above, Williams has sufficiently pled a claim under the ICFA.

**CONCLUSION**

For the foregoing reasons, AmeriCredit Financial Services, Inc.'s Rule 12(b)(6) Motion to Dismiss Counts IV and V of Williams' Complaint is denied.

Dated: *April 7, 2009*

  
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JOHN W. DARRAH  
United States District Judge